IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 144 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

SHARP REFILS CO PVT LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant
NOTICE SERVED for Respondent : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 05/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “B”

has referred the following question under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of Commissioner of Income Tax.

> "Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to grant depreciation on the cost of the assets without deducting the amount of subsidy therefrom?"

2. The assessment year is 1984-85 and the relevant accounting period is the financial year which ended on 31st March 1984.

3. Heard Mr.M.R.Bhatt, the learned senior standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the respondent assessee.

4. As can be seen from the order of Tribunal, the Tribunal has followed the decision of this Court in the case of CIT v. Grace Paper Industries P. Ltd., 183 ITR 591. Mr.Bhatt has fairly pointed out that the said decision in the case of CIT v. Grace Paper Industries P. Ltd. (supra) has been approved by the Apex Court in the case of Commissioner of Income Tax v. P.J. Chemicals Ltd.,

[1994] 210 ITR 830.

5. In the circumstances, applying the ratio of the said decision, it is held that the Income Tax Appellate Tribunal is right in law and on facts in directing the assessing officer to grant depreciation on the cost of the assets without deducting the amount of subsidy therefrom. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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